

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

In the matter of the TCN Company,) **COMPLAINT NO. 6-98-70:**
Violation of Section 13267 of the California Water Code) **FOR ADMINISTRATIVE**
WDID NO. 6A099809N02) **CIVIL LIABILITY**

**ISSUED TO THE TCN COMPANY,
YOU ARE HEREBY GIVEN NOTICE THAT:**

1. You are charged with a violation of provisions of law, or orders of the Regional Water Quality Control Board, Lahontan Region (Regional Board), for which the Regional Board may impose administrative civil liability pursuant to the California Water Code.
2. Unless waived, a hearing on this matter will be held before the Regional Board within 60 days following the issuance of this Complaint. You, or your representatives, will have an opportunity to address and contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. The hearing is scheduled for November 5 and 6, 1998 in Lancaster, California. An agenda showing the time set for the hearing will be mailed to you not less than ten days before the hearing date.
3. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

ALLEGATIONS

4. **The TCN Company (TCN)** violated the following provision of law and an order of the Regional Board:

Section 13267, California Water Code (CWC)

The Regional Board Executive Officer issued a letter to TCN on May 1, 1998 that contained the following directive:

“...pursuant to Section 13267 of the California Water Code, you are hereby directed to implement the site investigation previously approved by Board staff and to submit a technical report with the investigation results to this office by **June 15, 1998.**”

William McClintock submitted a technical report to the Regional Board on August 28, 1998, that described the results of investigations at the Big Tree Cleaners.

5. The following facts are the basis for the violation of CWC, Section 13267. These findings are based on information provided by William McClintock, David Lowery, Mr. McClintock’s consultants, Bonkowski and Associates, Inc. (M. Bonkowski and C. Dittmar) and Environmental Control Associates (T. Tyler), Mr. McClintock’s legal advisor (G. Lien, Esq.), the Placer Division of Environmental Management (R. Palmer),

an adjacent property owner (G.J. Loeb), ~~and~~ the legal advisor for the new owners of the adjacent property (D. Headley), ~~and as well as~~ information ascertained by Regional Board staff. ~~[run-on sentence]~~

~~An illegal discharge of~~ Cehlorinated hydrocarbons ~~emanated~~ were released from a dry cleaning facility at the Big Tree Cleaners, 531 North Lake Boulevard, in Tahoe City, Placer County. The chemical discharged is a hazardous substance and resulted in pollution of the soil and ground water. In August 1997, soil contaminated with tetrachloroethene (PCE) was discovered during a preliminary site assessment for a property transaction. The period of the discharge and the amount of the discharge are not known.

Regional Board staff met with Mr. McClintock, Mr. Lowery, Mr. Lien, Mr. Tyler, and Mr. Palmer on August 26, 1997. Board staff was presented with laboratory data that showed PCE exists in soil at concentrations up to 3,660 ppm beneath the floor drain inside the dry cleaners building. The pollution in the soil extended beneath the water table, however, no water sample was collected. The County staff indicated the site poses a significant threat to human health and the environment. Board staff requested ~~that~~ the responsible parties to prepare a workplan to define the lateral and vertical extent of pollution in soil and ~~potential~~ impacts to water quality. Mr. McClintock agreed to submit a workplan to the Regional Board ~~a workplan for an additional assessment~~ before September 10, 1997~~8~~. ~~No~~ The Regional Board did not receive a workplan. ~~was received however.~~

Mr. Bonkowski contacted Board staff on September 25, 1997 stating that his office was hired by William McClintock to prepare the investigation workplan. After discussing the workplan with him, Board staff recommended that it be submitted as soon as possible. One month later, Mr. Bonkowski called a different Board staff to again discuss the workplan. After the conversation, the Regional Board still had not received a workplan for the site investigation at the Big Tree Cleaners.

On December 26, 1997, Regional Board staff sent a letter to Mr. McClintock and the TCN Company, Mr. and Mrs. Lowery, and Ms. Pomin ~~requesting~~ requiring that they submit a workplan by February 6, 1998 for defining the cause and extent of pollution associated with the Big Tree Cleaners. On behalf of TCN and Mr. McClintock, Bonkowski and Associates submitted a workplan, dated February 5, 1998, ~~was submitted~~ to the Regional Board ~~by Bonkowski and Associates, on behalf of Mr. McClintock.~~ The workplan ~~The workplan discharger~~ proposed to implement three actions in a phased approach: 1) a soil vapor survey, 2) excavation of soil contamination beneath the dry cleaners, and 3) installation of three monitoring wells. The workplan stated that a report with the results of the investigations would be submitted approximately ~~[???~~ six weeks after approval was received. Board staff approved the workplan on February 26, 1998, with the provisions that certain soil vapor points be relocated and a fourth monitoring well be installed in front of the Big Tree Center building to evaluate the potential threat to Lake Tahoe. The report was not submitted to the Regional Board, nor were the assessment activities initiated within six weeks following workplan approval. ~~the process whereby he submitted a workplan stating that he'd get you a report~~

~~“approximately” 6 weeks later and subsequent approval seems quite fuzzy — I hope that this is not the basis for days of ACL~~

On April 7, 1998, Mr. Bonkowski informed Board staff that he was still waiting for site access by the property owners to the east of the Big Tree Cleaners building to start the soil vapor survey. Board staff advised Mr. Bonkowski to deviate from the original phased investigation approach and complete the soil excavation beneath the dry cleaners while waiting for approval for off-site access. ~~fin writing?~~

The Regional Board Executive Officer sent a letter ~~fyay!~~ dated May 1, 1998 to Mr. McClintock and TCN stating that the responsible parties for the Big Tree Cleaners were delinquent in submitting a technical report to the Regional Board. The responsible parties were directed to implement the site investigation as approved in Board staff's February 26, 1998 letter and to submit a technical report by June 15, 1998. The letter stated that failure to submit the technical report may result in enforcement action by the Regional Board in the form of a cleanup and abatement order or an administrative civil liability. The Lowerys, Ms. Pomin, and Mr. Bonkowski were sent a copy of the Executive Officer's letter. ~~registered/return receipt I hope~~

On May 12, 1998, Mr. Headley gave verbal approval to Mr. Bonkowski for access to the adjacent eastern property, at 551 North Lake Boulevard. The soil vapor survey was begun on May 15, 1998 and the results were sent in a report to the Regional Board on June 1, 1998. The survey results indicated that PCE contamination extended beneath the eastern adjacent property and North Lake Boulevard, the assumed down gradient direction. The results were unable to differentiate whether contamination is in soil or groundwater.

The Regional Board Executive Officer called Mr. McClintock on July 17, 1998 to remind him that the technical report for the ground water investigation and soil excavation was more than a month overdue. Mr. McClintock indicated that he would try to get the report submitted by early August. Mr. McClintock also had Bonkowski and Associates submit a July 22, 1998 letter explaining that delays were due to obtaining access to the eastern off-site property. The letter did not address why soil had not yet been excavated from beneath the Big Tree Cleaners.

At the request of Regional Board staff on August 10, 1998, Bonkowski and Associates provided laboratory results of water samples collected on July 13, 1998 from monitoring wells that had been installed. The results show PCE in ground water ranging in concentrations from 0.81 µg/l to 1,160 µg/l. These levels ~~greatly significantly~~ exceed the State drinking water maximum contaminant level of 5 µg/l. The extent of PCE contamination in ground water is not known. ~~The site is Lake Tahoe exists~~ less than 400 feet from ~~Lake Tahoe the site~~.

On August 28, 1998, the Regional Board Executive Officer telephoned Mr. McClintock and informed him that Board staff was preparing an administrative civil liability for non-compliance with Section 13267. Later that day, the Regional Board received a technical report for the Big Tree Cleaners by facsimile from Bonkowski and Associates. The facsimile report did not contain appendices with monitoring well designs, boring logs,

and laboratory analytical sheets. A complete version of the report with appendices was received on August 31, 1998. The report states that soil excavation was implemented during the week of July 28, 1998. This activity could have been completed in April 1998, thereby preventing additional groundwater contamination. In addition, site access was obtained-granted for the eastern adjacent property on May 12, 1998, but the monitoring wells were not installed until the week of July 6, 1998. ~~Furthermore, the~~

PROPOSED CIVIL LIABILITY

6. For the failure to submit a technical report, the Regional Board may impose administrative civil liability under the following section:

Pursuant to Section 13268(d)(1) of the California Water Code, when there is a discharge of hazardous waste and a person knowingly fails or refuses to furnish technical or monitoring reports as required by the Regional Board, liability may be imposed not to exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

7. In this matter, Regional Board staff have determined that the TCN Company has violated a requirement of the Regional Board. The Regional Board received the technical report for the Big Tree Cleaners on August 28, 1998, 74 days after the required submitted date of June 15, 1998. Therefore, the maximum administrative civil liability pursuant to Section 13268(d)(1) for 74 days of violation is three hundred seventy thousand dollars (\$370,000).

8. Pursuant to Section 13327 of the CWC, the Executive Officer has considered the following factors in recommending the amount of the administrative civil liability:

- a. The nature, circumstances, extent, and gravity of the violation or violations;

The violation is of a very serious nature, involving discharge of chlorinated hydrocarbons to ground water in violation of the California Water Code and waste discharge prohibitions in the 1995 ~~W~~Water Quality Control Plan for the Lahontan Region. PCE is a hazardous substance as defined in the Health and Safety Code. The extent of the PCE plume in ground water has not been defined by the responsible parties. The dry cleaners~~s~~[plural?] exists- is located within 400 feet of Lake Tahoe.

- b. Whether the discharge is susceptible to cleanup or abatement;

The discharge is susceptible to cleanup and abatement. The discharger has ~~attempted to~~ cleaned up some (but not nearly all) of the soil contamination beneath the Big Tree Cleaners, but have made no attempt to clean up contaminated groundwater. ~~However, the impairment of ground water used for municipal and domestic supply and for fresh water replenishment has not been abated.~~

- c. The degree of toxicity of the discharge;

The discharge contains chlorinated hydrocarbons (PCE) in toxic amounts. The level of PCE detected in ground water at the Big Tree Center significantly exceeds the State of California Drinking Water Maximum Contaminant Level.

- d. The violator's ability to pay;

TCN has not provided financial data to the Regional Board to show its inability to pay the proposed liability. However, based on past discussions with Board staff, it appears that TCN has limited financial capabilities.

- e. The effect on the violator's ability to continue business;

TCN has not provided financial data to the Regional Board to show the proposed liability will hinder its ability to continue in business. Yet, based on past discussions with Board staff, a significant liability will, most likely, have a negative impact on the ability to continue in business at the Big Tree Center.

- f. Any voluntary cleanup efforts undertaken by the violator;

At Regional Board direction, TCN has excavated some soil containing high levels of PCE from beneath the Big Tree Cleaners. Yet, no effort has been taken to contain ground water pollution ~~from~~ migrating from the site.

- g. Any prior history of violations;

TCN failed to submit a site investigation workplan requested by Board staff at a meeting on August 26, 1997. TCN also failed to submit a technical report with the investigation results to the Regional Board according to the schedule proposed in the February 5, 1998 workplan.

- h. The degree of culpability;

TCN is one of four responsible parties for the site and William McClintock presented TCN as the representative for the group. Therefore, TCN is culpable for failing to provide a technical report by the deadline set by the Regional Board Executive Officer.

- i. Any economic savings for the violator resulting from the violation;

Economic savings from postponement of investigation and clean up costs are estimated at \$4,300. This amount is based

~~have not yet spent the \$\$ to do the cleanup, and the cost of the cleanup ought to be included here. You can't simply assume that they'll do the cleanup some time.]~~

- j. Other matters as justice may require.

Regional Board staff and the Executive Officer have spent time writing correspondence, conferring with consultants and representatives, conferring with interested public, conferring with the local public health agency, and issuing the administrative civil liability complaint. Estimated staff costs to date for preparation of the complaint are \$4,600.

The Executive Officer is imposing a \$100 per day liability amount for the first 32 days of violation. After the Executive Officer notified TCN of the violation on July 17, 1998, liability amounts were imposed in the amount of \$500 per day for the remaining 42 days.

9. The Executive Officer of the Regional Board proposes that administrative civil liability be imposed by the Regional Board in the amount of ~~\$241,260~~^{\$241,260}, pursuant to CWC, Section 13268(d)(1). ~~[whimpy — once again, we are relying on unsubstantiated claims of inability to pay to impose a nothing fine. This is BAD policy]~~

WAIVER OF HEARING

10. You may waive the right to a hearing. If you choose to waive the hearing, please check and sign the waiver and return it prior to the proposed hearing date, together with a cashier's check or money order for the amount of civil liability proposed in paragraph 8 above, to the following address:

California Regional Water Quality Control Board
Lahontan Region
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

Ordered by: _____ Dated: _____
HAROLD J. SINGER
EXECUTIVE OFFICER